

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Case No.: 5:20-cv-00157-KDB-DCK

CURTIS EDWIN LEYSHON,

Plaintiff,

v.

Michael Duncan, individual and official
capacity; B. Carlton Terry, individual and
official capacity; Pam Barlow, individual and
official capacity; and Matthew Levchuk,
individual and official capacity,

Defendants.

**RESPONSE TO PLAINTIFF'S
MOTION FOR SANCTIONS**

NOW COMES Special Deputy Attorney General Elizabeth Curran O'Brien, and hereby submits this response to Plaintiff's "Motion for Sanctions for Bad Faith of Defendant's Representative Elizabeth O'Brian (sic) at the Required Settlement Conference."

In this matter, the defendants were served concurrently with Plaintiff's Complaint and Standing Order 5:19-MC-5 requiring an Initial Settlement Conference in Civil Cases Assigned to the Honorable Kenneth D. Bell. Upon receipt of Standing Order 5:19-MC-5, undersigned counsel reviewed the Order. The Order requires an initial settlement conference prior to filing an Answer or other response to explore the possibility of settling civil cases at an early stage of the proceeding. This settlement conference is not a

Rule 16 pre-trial conference. The Order further delineates exceptions to the Order, none of which seemed to apply in this case. Finally, the Order puts the onus on Defendant's counsel to initiate communication with the Plaintiff to arrange the settlement conference.

On October 14, 2020 undersigned counsel entered a Notice of Appearance on behalf of all defendants. [DE 5] On October 15, 2020, undersigned counsel sent a letter to the *pro se* Plaintiff requesting he arrange for a call on October 26, 2020, at 10:00am in an effort to comply with Standing Order 5:19-MC-5. On October 22, 2020, Plaintiff called undersigned counsel and the parties rescheduled to call for November 2, 2020 at 2:00pm. On November 2, 2020, undersigned counsel called the Plaintiff and attempted to ascertain if there was any common ground upon which the parties could discuss a resolution of this matter. Within the first few minutes, Plaintiff again stated he wanted \$1 million from each defendant and argued that there were no elections for North Carolina officials and that elected judges and the clerk are not public officers and have no authority. Plaintiff repeatedly made claims wholly unsupported by any valid legal theory (which are more thoroughly described in the memorandum in support of Defendants Motion to Dismiss [DE – 11]) and it was clear that the discussion would not be fruitful. Plaintiff become combative when undersigned counsel would not engage in an analysis of his frivolous legal claims and after 22 minutes, as Plaintiff became more aggressive, undersigned counsel informed Plaintiff she would hang up the phone.

Undersigned counsel, in good faith, attempted to comply with Standing Order 5:19-MC-5 by contacting Plaintiff and making arrangements to conduct a pre-litigation settlement conference. However, due to the frivolous nature of Plaintiff's legal theories

and claims, and Plaintiff's combative demeanor toward undersigned counsel, a meaningful settlement conference was an impossibility.

For the foregoing reasons, Plaintiff's Motion for Sanctions should be denied.

This, the 30th day of November, 2020.

/s/ Elizabeth Curran O'Brien
Elizabeth Curran O'Brien
Special Deputy Attorney General
N.C. Department of Justice

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day electronically filed the foregoing **RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS** with the Clerk of the court using the CM/ECF system which will send notification of such filing to the parties of record who participate in the CM/ECF system and placed a copy of the same in the U.S. Mail, postage-prepaid, addressed to the following individual:

Curtis Edwin Leyshon
915 North Pine Run Road
Boone, NC 28607
Pro Se Plaintiff

This, the 30th day of November, 2020.

/s/ Elizabeth Curran O'Brien
Elizabeth Curran O'Brien
Special Deputy Attorney General
N.C. Department of Justice